

(July 29, 2014)(where guarantors waived defense based on failure to obtain a valid confirmation of the foreclosure sale, lender was entitled to collect difference between amount due on note and the foreclosure sale proceeds from guarantors). Since Defendants expressly waived, among other things, all defenses arising under any anti-deficiency statutes such as O.C.G.A. § 44-14-161 in their Guaranties, Certus is entitled to recover the remaining outstanding debt under the Notes. *See Cmty. & S. Bank*, 760 S.E.2d at 216.

The *PWC* case referenced by the Court in its May 11, 2016 Order confirms this analysis, as it is just one more controlling case in a growing line of applicable case law that clearly holds waivers of Georgia's confirmation statute in a loan document or guaranty are enforceable. *See PNC*, 2016 WL 1276376, at *2 ("The second question we have been asked to answer is whether a guarantor can waive the condition precedent requirement of the confirmation statute by virtue of waiver clauses in the loan documents. Guarantors may waive the condition precedent.")

Furthermore, Defendants' argument that Plaintiff, in seeking but failing to obtain confirmation of its foreclosure somehow waived its ability to rely on the guarantors' waivers lacks merit. In ruling that the confirmation statute can be waived as a matter of Georgia law in a guaranty, the Court in *PWC* relied on and cited with approval *HWA Properties, Inc. v. Cmty. & S. Bank*, 322 Ga. App. 877, 877, 746 S.E.2d 609, 611 (2013), in which the bank lost confirmation of its foreclosure sale on reversal from the Court of Appeals. The guarantor in *HWA* was nevertheless found to have waived the protection of the confirmation statute. *See HWA*, 322 Ga. App. at 887-88 ("CSB's failure to obtain a valid confirmation of the foreclosure sale, pursuant to OCGA § 44-14-161, does not impair its authority to collect the difference between the amount due on the note and the foreclosure sale proceeds from Albright based upon his personal guaranty.")

By pursuing but not obtaining confirmation in this case, Plaintiff did not waive its ability to rely upon the guarantors' waivers contained in the applicable guaranties as Defendants contend.

WHEREFORE, for all of the foregoing reasons, Plaintiff respectfully requests that the Court grant its Motion.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that that on May 18, 2016 I electronically filed the foregoing *Plaintiff's Memorandum of Law in Support of Plaintiff's Motion for Summary Judgment* with the Clerk of Court using the CM/ECF system, which will automatically send email notification of such filing to the following attorney(s) of record.

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